

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Michael Kane, *et al.*,

Plaintiffs,

21-CV-7863

-against-

**UPDATED AND
SUPPLEMENTED
DECLARATION OF
VICKI BERNSTEIN**

Bill de Blasio, *et al.*,

Defendants.

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VICKI BERNSTEIN, under penalty of perjury, declares pursuant to 28 U.S.C. § 1746, that the following statements are true and correct:

1. I am the Chief Human Capital Officer at the New York City Department of Education (DOE). I submit this declaration in opposition to Plaintiffs' application for a temporary restraining order and preliminary injunction enjoining the DOE from implementing a COVID-19 vaccination mandate for all DOE employees and other personnel in DOE schools. I am familiar with the facts set forth herein based on my personal knowledge as well as discussions with other DOE employees and the review of DOE records and publicly available information.

2. Plaintiffs are DOE employees who are represented in collective bargaining by the United Federation of Teachers (UFT) or the Council of Supervisors and Administrators (CSA), unions that represent DOE teachers and DOE school supervisors such as principals and assistant principals, respectively.

3. On September 10, 2021, an arbitrator issued a decision to resolve the impasse between the UFT and the City of New York regarding the implementation of the Commissioner of Health order mandating vaccination of DOE employees (Vaccination Mandate).

The decision established a process for UFT members to request medical and religious exemptions from the Vaccination Mandate as well as non-exemption accommodations, and an appeals process for any denials of such requests. The arbitrator issued a similar decision on September 15, 2021 for CSA members. A copy of these decisions is annexed collectively hereto as Exhibit “A.”

4. Each of the plaintiffs is represented by the UFT or CSA.

5. Under the Vaccination Mandate, DOE employees were required to submit proof of receipt of at least one dose of the vaccine by Friday, October 1, 2021. As of today’s date, 95% of DOE employees have complied; approximately 7,000 employees of a total of approximately 147,000 DOE employees (including both school staff and staff in administrative offices) have not complied.

6. The DOE maintains school-specific information regarding the number of teachers in compliance with the vaccination mandate to identify where substitute coverage is needed. For the seven schools where the plaintiffs who serve as teachers work, current teacher compliance with the Vaccination Mandate is as follows:

- School 28Q896 (Michael Kane): 31 out of 34 teachers, or 91%, are in compliance;
- School 75K369 (Trinidad Smith): 120 out of 124 teachers, or 97%, are in compliance;
- School 04M038 (Margaret Chu): 21 out of 22 teachers, or 95%, are in compliance;
- School 31R036 (Stephanie DiCapua): 55 out of 61 teachers, or 90%, are in compliance;
- School 02M416 (Robert Gladding): 32 out of 34 teachers, or 94%, are in compliance;
- School 11X068 (Nwakaego Nwaifejokwu): 56 out of 61 teachers, or 92%, are in compliance;
- School 24Q012 (Ingrid Romero): 62 out of 67 teachers, or 93%, are in compliance.

7. To date, religious exemptions have been granted to DOE employees who self-identify as adhering to one of approximately 20 different religions; for example, they self-

identify as Roman Catholic, Jewish, Buddhist, Baptist, Muslim, Seventh Day Adventist, Christian, Evangelical Christian, Orthodox Christian, “Jew following Christ,” Sabbath Day Adventist, Esin Orisa Ibile, Christian Scientist, Greek Orthodox, Church of God (Seventh Day), Universal Life Church, Krishna, Apostolic Pentecostal, and Kemeti, and include individuals as to whom their specific religion is not identifiable.

Dated: October 8, 2021
 New York, New York

By: *Vicki Bernstein*
 Vicki Bernstein
 Chief Human Capital Officer